



Murray Irrigation

Transfer Rules Policy

Effective: 18 April 2019

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Part A: General

1. Introduction

1.1 A Customer's Entitlements Contract binds them to this Policy.

1.2 This Policy:

(1) applies to:

- (a) Annual Transfers;
- (b) Permanent Transfers;
- (c) Transformation; and
- (d) Conversions.

(2) should be read in conjunction with, and is subject to, the Entitlements Contract, any relevant Policies, the *Water Act 2007* (Cth), the *Basin Plan 2012* (Cth), the Water Market Rules, the *Water Charge (Termination Fees) Rules 2009* (Cth), the Act, the Dealing Principles, the Water Sharing Plan, the terms of the relevant Access Licences, and all other relevant laws, regulations and orders; and

(3) may also be affected by rules or processes stipulated by the NSW Minister or Government Agencies.

1.3 The documents referenced in rules 1.2(2) and (3) relate to this Policy as follows:

- (1) all of the documents, other than any other relevant Policies, take precedence over this Policy to the extent necessary to resolve any inconsistency; and
- (2) to the extent that there is any inconsistency between a provision in this Policy and a provision in any other relevant Policies, a specific provision takes precedence over a general provision.

1.4 This Policy must be published on the Company's website (<http://www.murrayirrigation.com.au>).¹ If a person requests a copy of this Policy, the Company must give a copy of this Policy to that person as soon as practicable, but in any case within 30 days after receiving the request.² If this Policy changes, the Company must, as soon as practicable, but in any case within 30 days after the change, publish the new Policy on the Company's website³ and send an email to watermarkets@mdba.gov.au attaching a copy of the Policy or containing a hyperlink to the Policy on the Company's website.⁴

2. Guide to this document

2.1 This Policy is set out in separate Parts.

2.2 Part A, which contains definitions and general rules, always applies.

2.3 Parts B to E apply as follows:

- (1) Part B applies only to Annual Transfers;

¹ Subsection 12.47(4) of the Water Trading Rules.

² Subsection 12.47(3) of the Water Trading Rules.

³ Paragraph 12.47(4)(b) of the Water Trading Rules.

⁴ Paragraph 12.47(4A)(b) of the Water Trading Rules.

- (2) Part C applies only to Permanent Transfers;
- (3) Part D applies only to Transformation; and
- (4) Part E applies only to Conversions.

3. Definitions and interpretation

3.1 In this Policy, the following words have these meanings unless the contrary intention appears:

- (1) **Annual Transfer** means an Internal Annual Transfer or an External Annual Transfer;
- (2) **Applicant** means a party to an Application;
- (3) **Application** means an application:
 - (a) in the form prescribed by the Company, for a Transaction, which is completed and duly executed to the Company's satisfaction, which includes all documents required for the application, and in respect of which the relevant Charge has been paid; or
 - (b) for an Internal Annual Transfer of Water Allocation using the Company's automated telephone ordering system, in accordance with the procedure established by the Company from time to time and using the Secondary PIN;
- (4) **Associate** means;
 - (a) in relation to a corporation:
 - (i) a related body corporate (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of the corporation;
 - (ii) a person that controls or is controlled by the corporation (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth));
 - (iii) a person that has a substantial holding (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) in the corporation or of any body corporate in which the corporation has a substantial holding;
 - (iv) a director, secretary or officer of the corporation or of any body corporate that is an Associate of the corporation;
 - (v) any trustee of a trust under which the corporation benefits or may benefit; and
 - (vi) any person with whom the corporation is acting, or proposes to act, in concert and any person with whom the corporation is, or proposes to become, associated in any other way (whether formally or informally);
 - (b) in relation to a natural person:
 - (i) the person's spouse, parent, child, grandparent, or any child of any of those persons; and
 - (ii) any corporation in respect of which the person is an Associate by reason of clause (a); and
 - (c) in relation to a person (whether a corporation or a natural person) who enters into an Entitlements Contract as trustee of a trust, any person who benefits or may benefit under that trust;

- (5) **Carryover Unit** has the meaning given to that term in the Distribution Rules Policy;
- (6) **Conversion** means cancellation of Water Entitlements of one class and the issue of Water Entitlements of another class.
- (7) **Dealing Principles** means the *Access Licence Dealing Principles Order 2004* (NSW);
- (8) **External Annual Transfer** means an External Annual Transfer In or an External Annual Transfer Out by one of the arrangements set out in rules 8.1(3), (4) and (5);
- (9) **External Annual Transfer In** means an assignment dealing (as defined in the Act) to an Access Licence held by the Company and crediting of Water Allocation to a Water Allocation Account of the Applicant who is the transferee named in the Application;
- (10) **External Annual Transfer Out** means an assignment dealing (as defined in the Act) from an Access Licence held by the Company and debiting of Water Allocation from a Water Allocation Account of the Applicant who is the transferor named in the Application;
- (11) **External Permanent Transfer In** means an arrangement set out in rule 18 to allow an Applicant to be issued Water Entitlements under an Entitlements Contract;
- (12) **Internal Annual Transfer** means:
- (a) in relation to Water Allocation, the debiting of Water Allocation from the Water Allocation Account of the Applicant who is the transferor named in the Application and the crediting of Water Allocation to the Water Allocation Account of the Applicant who is the transferee named in the Application; and;
 - (b) in relation to a Delivery Entitlement, either:
 - (i) the variation of the Delivery Entitlement to relate to another of the Applicant's Landholdings in respect of one Water Year; or
 - (ii) the variation of the Delivery Entitlement to relate to the transferee's Landholding in respect of one Water Year and the assignment by the transferor to the transferee of the right to exercise the Delivery Entitlement, as varied, in respect of that Water Year and reversion of that right to the transferor at the end of that Water Year; or
 - (c) in relation to a Carryover Unit, the transfer of the Carryover Unit by the Applicant who is the transferor named in the Application to the Applicant who is the transferee named in the Application;
- (13) **Internal Permanent Transfer** means:
- (a) a transfer of Water Entitlements by the Applicant who is the transferor named in the Application to the Applicant who is the transferee named in the Application who will hold the Water Entitlements under an Entitlements Contract, and which does not have the effect of increasing or reducing the share component of an Access Licence of the Company;
 - (b) a transfer of Delivery Entitlements by the Applicant who is the transferor named in the Application to the Applicant who is the transferee named in the Application who will hold the Delivery Entitlements under an Entitlements Contract;
 - (c) a transfer of Shares by one Applicant to another Applicant; or
 - (d) a transfer of Delivery Entitlements by an Applicant between the Landholdings of that Applicant;

- (14) **Irrigation Right** means a right that:
- (a) a person has against the Company to receive water (such as a Water Entitlement);
 - (b) is not a right conferred by or under a law of a state to do either or both of the following:
 - (i) to hold water from a water resource;
 - (ii) to take water from a water resource;
 (such as an Access Licence); and
 - (c) is not a right to have water delivered by the Company (such as a Delivery Entitlement);
- (15) **NSW Minister** means the minister from time to time administering the Act;⁵
- (16) **Part A** means rules 1 to 5;
- (17) **Part B** means rules 7 to 14;
- (18) **Part C** means rules 16 to 24;
- (19) **Part D** means rules 25 to 38;
- (20) **Part E** means rule 39;
- (21) **Permanent Transfer** means an Internal Permanent Transfer or an External Permanent Transfer In;
- (22) **Specific Purpose Access Licence** has the meaning given to that term in the Act;⁶
- (23) **Transaction** means an Annual Transfer, Permanent Transfer, Transformation or Conversion,
- (24) **Transformation** has the same meaning in this Policy as *transformation arrangements* has in the *Water Act 2007* (Cth) and includes the arrangements set out in rule 27;
- (25) **Transformed Water Allocation** means the water allocation (as defined in the Act or interstate equivalent) to which the Customer is entitled from time to time under an Access Licence (or interstate equivalent) held by the Customer;
- (26) **Water Market Rules** means the *Water Market Rules 2009* (Cth);
- (27) **Water Sharing Plan** means the *Water Sharing Plan for the New South Wales Murray and Lower Darling Regulated Rivers Water Sources 2016* (NSW); and
- (28) **Water Trading Rules** means the Water Trading Rules in Chapter 12 of the *Basin Plan 2012* (Cth).
- 3.2 In this Policy, unless the contrary intention appears, a word or phrase defined in the Entitlements Contract has the same meaning in this Policy.
- 3.3 Clause 1.2 (Interpretation) of the Entitlements Contract applies to this Policy with the necessary changes.

⁵ Subsection 15(2) of the *Interpretation Act 1987* (NSW).

⁶ Dictionary of the Act and regulation 5 of the *Water Management (General) Regulation 2011* (NSW).

- 3.4 Reference to the Internal Permanent Transfer of Water Entitlements or Delivery Entitlements is to be construed in accordance with rule 22.4.

4. Governmental decisions

- 4.1 The Company may change or reverse a determination with respect to an Application or a Transaction if a decision of the NSW Minister or a Government Agency (including a change to, or reversal of, a previous decision) affects the Application or the Transaction.

5. Costs

- 5.1 The Applicants must pay, and indemnify the Company against, all Costs (including stamp duty and government imposts) connected with the negotiation, preparation, execution, stamping and registration of Transactions.

6. Security

- 6.1 Where a Customer holds, or will, after any transaction or dealing (including a Transaction other than a Permanent Transfer to which clause 23 applies or a Transformation to which clause 36 applies), issue of Delivery Entitlements or cancellation of Water Entitlements, or reduction in the amount of security (including as a result of the Company applying the security in accordance with rule 6.9, 23.9 or 36.9 or otherwise), hold, either:

- (1) Delivery Entitlements but no Water Entitlements; or
- (2) at least five times more Delivery Entitlements than Water Entitlements and at least 250 Delivery Entitlements;

the Company may, to the maximum extent permitted by law, require security or additional security (as the case may be) to be given by the Customer for the payment of Charges for access to the Company's Works for the delivery of water to the Customer.

- 6.2 The Company must not require security or additional security (as the case may be) to be given by the Customer under rule 6.1 in an amount that, at the time the security or additional security (as the case may be) is given:

- (1) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009* (Cth), would be payable to the Company for the termination or surrender of the Delivery Entitlements held by the Customer at that time (this will generally be the amount of the termination fee that would be payable to the Company for the termination or surrender of all of the Delivery Entitlements held by the Customer at that time); or
- (2) if there is no such amount, exceeds the amount of the "total network access charge" within the meaning of the *Water Charge (Termination Fees) Rules 2009* (Cth) payable to the Company in respect of the financial year in which the security or additional security (as the case may be) is given.

- 6.3 The Company may refuse to accept security required under rule 6.1 unless the Customer offers it in one or more of the following forms:

- (1) a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) (**Bank Guarantee**);
- (2) a deposit lodged with the Company (**Deposit**); or
- (3) any other form of security agreed upon by the Company and the Customer.

- 6.4 If the security given by the Customer is a Bank Guarantee, the Bank Guarantee must:
- (1) be unconditional; and
 - (2) not have an expiry date, except with the Company's consent.
- 6.5 If the security given by the Customer is a Deposit, the Company must (and the Customer authorises the Company to) deposit the Deposit in an interest-bearing cash management account.
- 6.6 The Company must pay interest earned on the Deposit to the Customer periodically as determined by the Company.
- 6.7 The Customer bears the risk of loss of the Deposit.
- 6.8 For the purposes of this clause 6, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.
- 6.9 The Company may apply the security given by the Customer in accordance with clause 6.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination or surrender of the Customer's Delivery Entitlements or the termination of the Entitlements Contract.
- 6.10 Subject to clauses 6.1 and 6.9, the Company must return any surplus of the security after deduction under clause 6.9 to the Customer after 14 days have elapsed from the termination or surrender of the Customer's Delivery Entitlements or the termination of the Entitlements Contract.

Part B: Annual Transfers

7. Annual transfers generally

7.1 Annual Transfers:

- (1) must comply with this Policy; and
- (2) require the approval of the Company.

7.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:

- (1) embargo Annual Transfers other than Internal Annual Transfers of Delivery Entitlements; or
- (2) make exceptions to this Policy on a case-by-case basis other than with respect to Internal Annual Transfers of Delivery Entitlements.

8. Types of annual transfers

8.1 An Annual Transfer means any of the following arrangements, provided that it is permitted by law:

- (1) **(internal annual transfers – one-off)** an Internal Annual Transfer of Water Allocation, Delivery Entitlements or Carryover Units;
- (2) **(internal annual transfers – recurring)** an Internal Annual Transfer of all the Annual Allocation credited to an Applicant's Water Allocation Account in respect of specified Water Entitlements:
 - (a) for a specified number of Water Years; or
 - (b) for each Water Year until the end of the Water Year in which the Applicant gives the Company at least one month's notice that the Internal Annual Transfer is terminated;
- (3) **(external annual transfers – same water source)** an External Annual Transfer where the other party holds an Access Licence in the New South Wales Murray Regulated River Water Source;⁷
- (4) **(external annual transfers – different NSW water source)** an External Annual Transfer where the other party holds an Access Licence with respect to a water source other than the New South Wales Murray Regulated River Water Source;⁸ and
- (5) **(external annual transfers – different state)** an External Annual Transfer where the other party holds an interstate Access Licence equivalent.⁹

9. Prohibited annual transfers

9.1 Subject to rule 9.2, Annual Transfers of Water Allocation determined in respect of Class A Water Entitlements are prohibited.

9.2 Internal Annual Transfers of Water Allocation determined in respect of Class A Water Entitlements to Applicants holding Class A Water Entitlements are not prohibited by rule 9.1.

⁷ Sections 71T of the Act, clause 17 of the Dealing Principles and clause 61 of the Water Sharing Plan.

⁸ Sections 71T of the Act, clause 17 of the Dealing Principles and subclauses 61(2) and 61(3) of the Water Sharing Plan.

⁹ Sections 71V of the Act, clause 19 of the Dealing Principles and subclause 62(2) of the Water Sharing Plan.

10. Deadlines

- 10.1 Applications for Internal Annual Transfers in respect of a Water Year must be received by the Company by 12 noon on the third Monday of June in that Water Year (unless that date is not a Business Day, in which case the Application must be received by 5 pm on the previous Business Day) or any other time and date determined by the Company in respect of that Water Year.
- 10.2 Applications for External Annual Transfers in respect of a Water Year must be received by the Company by 10 am on the date three Business Days before the relevant closing date published by the relevant Government Agency in respect of that Water Year or any other time and date determined by the Company in respect of that Water Year.

11. Application

- 11.1 An Application is required for an Annual Transfer.
- 11.2 Application forms may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.
- 11.3 Applications must be submitted to the Company before the relevant deadline under rule 10.
- 11.4 Application forms must be duly executed by:
- (1) if the Applicant is the sole holder of the Water Allocation, Delivery Entitlements or Carryover Units, the Applicant; or
 - (2) if several persons are joint holders of the Water Allocation, Delivery Entitlements or Carryover Units, all the joint holders or an authorised representative of all the joint holders.
- 11.5 An Applicant making an Application using the Company's automated telephone ordering system must use the Secondary PIN associated with the Applicant's Water Allocation Account.
- 11.6 Payment of the relevant Charge applicable to the Application must be made:
- (1) if an Application form is submitted, at the time and place of submission; or
 - (2) if the Application is submitted using the Company's automated telephone ordering system, by the next Business Day.
- 11.7 Applications for Internal Annual Transfers under rule 8.1(2) must specify the number of Water Years to which the Application relates, or that the Internal Annual Transfer is ongoing.
- 11.8 Applications will be considered at the office of the Company at which they are submitted in the order in which they are validly submitted at that office.
- 11.9 The Company may determine that Applications may not be submitted to one or more of its offices.
- 11.10 The Company will notify an Applicant if:
- (1) the Application is not complete or not in accordance with this Policy;
 - (2) payment of the relevant Charge applicable to the Application has not been made; or
 - (3) there are outstanding Charges payable by the Applicant (or an Associate of the Applicant) to the Company;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges. The Application will not be considered until the Company receives the

further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement is made between the Company and the Applicant (or an Associate of the Applicant) for the payment of the outstanding Charges).

12. Determination

- 12.1 The Company must determine each Application.
- 12.2 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions), provided that the Company must not impose any condition on an Annual Transfer of Water Allocation that would require an Applicant to hold, buy, sell, obtain, accept, terminate, or vary the volume or unit share of, a Delivery Entitlement.¹⁰
- 12.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application without giving any reason for refusal, including:
- (1) where the Application is incomplete or not in accordance with this Policy;
 - (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;
 - (3) where there are outstanding Charges payable by an Applicant (or an Associate of the Applicant) to the Company;
 - (4) where an Applicant has not fully repaid water debts or water borrowings, such as any that may have arisen as a result of arrangements made for the early release of water by Snowy Hydro Limited;
 - (5) a person who holds a legal or equitable interest in the Water Allocation, Delivery Entitlements or Carryover Units the subject of the Application, has not given approval to the Annual Transfer;
 - (6) where completion of the Annual Transfer would cause the Applicant's Water Allocation Account to have a negative balance;
 - (7) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
 - (8) where the Annual Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;
 - (9) where an Applicant will, after the Annual Transfer, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works;
 - (10) where an Applicant applies for an Internal Annual Transfer in relation to Delivery Entitlements that have already been exercised in the relevant Water Year; or
 - (11) where an Applicant applies for an Internal Annual Transfer of Delivery Entitlements and the Company, acting reasonably, restricts the transfer, having taken into account factors which include the following:¹¹
 - (a) overall capacity in the Company's irrigation network;
 - (b) capacity in the parts of the Company's irrigation network to which water would potentially be delivered under the transferred Delivery Entitlements;

¹⁰ Section 12.15 of the Water Trading Rules.

¹¹ Sections 12.28 and 12.29 of the Water Trading Rules. This does not preclude the Company from taking into account factors of the types specified in rules 12.3(1) to 12.3(10) or other factors.

- (c) reconfiguration or decommissioning work in the parts of the Company's irrigation network to which water would potentially be delivered under the transferred Delivery Entitlements;
- (d) connectivity between specific parts of the Company's irrigation network relevant to the proposed transfer;
- (e) payment of fees or charges for access, changing access, or terminating or surrendering access, to the Company's irrigation network;
- (f) the number of Delivery Entitlements reasonably required to irrigate a person's Landholding for both current and expected future water use;
- (g) the net costs to the Company of assessing and giving effect to the transfer of the Delivery Entitlements;
- (h) the provision of reasonable security to the Company for the payment of fees or charges for access to the Company's irrigation network by the person acquiring the Delivery Entitlements; and
- (i) whether the proposed transfer would result in the Delivery Entitlements being held by a person who does not own or occupy land in the area serviced by the Company.

13. Implementation

13.1 After an Application for an External Annual Transfer Out is approved, the Customer must not order any part of the relevant Water Allocation for delivery under an Entitlements Contract or make any Application for a Transaction in relation to that volume of Water Allocation.

13.2 An approved Annual Transfer takes effect:

- (1) in the case of an Internal Annual Transfer, on the date on which it is registered by the Company; and
- (2) in the case of an External Annual Transfer, on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.

13.3 In an approved Annual Transfer, the Company must:

- (1) debit or credit Water Allocation from the Water Allocation Account of the relevant Applicant;
- (2) make a notation of the Annual Transfer on the Delivery Entitlements Register, including of the Company's Supply Works associated with the Applicant's Landholding to which Water Allocation is to be delivered; or
- (3) terminate the Carryover Units being transferred by the transferor and grant the Carryover Units to be held by the transferee;

as the case requires.

13.4 An Annual Transfer of Carryover Units does not affect Water Allocation already credited to a Water Allocation Account before the Annual Transfer of Carryover Units takes effect.

14. Delivery

14.1 An Applicant:

- (1) will have no right to the delivery of any water, except under an Entitlements Contract between the Applicant and the Company; and
- (2) is responsible for ensuring that he, she or it has sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.

15. Internal Annual Transfer of Delivery Entitlements

- 15.1 An Internal Annual Transfer of Delivery Entitlements does not limit or affect the transferor's obligations under the Entitlements Contract in respect of the Delivery Entitlements, including in respect of Charges and the provision of security under this Policy.
- 15.2 The transferor and transferee are jointly and severally liable for all Charges which accrue in respect of Delivery Entitlements which are the subject of an Internal Annual Transfer, including both fixed and variable Charge, but excluding termination fees for which the transferor will remain solely liable.
- 15.3 An Internal Annual Transfer of Delivery Entitlements expires at the end of the Water Year in respect of which the Internal Annual Transfer applies, unless it is terminated earlier in accordance with this Policy. This rule does not prevent an Application to renew an Internal Annual Transfer in respect of another one or more Water Years.
- 15.4 An Internal Annual Transfer of Delivery Entitlements may be terminated before the end of the Water Year, subject to the transferor, transferee and Company all providing written consent.
- 15.5 The Company may terminate an Internal Annual Transfer of Delivery Entitlements immediately by giving notice to the transferor and the transferee if an Event of Default occurs in respect of the transferor or the transferee.
- 15.6 Delivery Entitlements the subject of an Internal Annual Transfer cannot be terminated by the transferee.
- 15.7 Delivery Entitlements the subject of an Internal Annual Transfer cannot be terminated by the transferor without the transferee's consent.
- 15.8 Nothing in this Policy limits or affects the Company's rights under any Entitlements Contract to terminate Delivery Entitlements which are the subject of an Internal Annual Transfer, including if an Event of Default occurs in respect of the transferor.
- 15.9 Neither the transferor nor the transferee can assign a right in respect of an Internal Annual Transfer of Delivery Entitlements without the prior written consent of the other party and the Company.

Part C: Permanent Transfers

16. Permanent transfers generally

16.1 Permanent Transfers:

- (1) must comply with this Policy; and
- (2) require the approval of the Company.

16.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:

- (1) embargo Permanent Transfers other than Internal Permanent Transfers of Delivery Entitlements; or
- (2) make exceptions to this Policy on a case-by-case basis other than with respect to Internal Permanent Transfers of Delivery Entitlements.

17. Internal permanent transfers

17.1 In an Internal Permanent Transfer, Water Entitlements and Delivery Entitlements are transferable separately.

17.2 Subject to rule 17.3, Shares may only be issued or transferred to a person who:

- (1) holds Delivery Entitlements; and
- (2) is the registered proprietor of a Landholding or a parcel of land within a Joint Water Supply Scheme.

17.3 Rule 17.2 does not prevent or restrict the Company from carrying out a share capital reduction or share buy-back.

18. Types of external permanent transfers in

18.1 An External Permanent Transfer In means any of the following arrangements, provided that it is permitted by law:

- (1) **(transfers in – same water source)** an arrangement that would reduce the share component of an Access Licence held by someone other than the Company to allow the share component to be permanently transferred to an Access Licence in the same water source that is held by the Company;¹² and
- (2) **(transfers in – different NSW water source)** an arrangement that would cancel an Access Licence held by someone other than the Company to allow an Access Licence with a share component specifying a different water source to be issued to the Company.¹³
- (3) **(transfers in – different state)** an arrangement that would cancel a right conferred by a law of a state to hold or take water from a water resource in another state held by someone other than the Company to allow an Access Licence to be issued to the Company.¹⁴

¹² Section 71Q of the Act, clause 14 of the Dealing Principles and clause 58 of the Water Sharing Plan.

¹³ Section 71R of the Act, clause 15 of the Dealing Principles and clause 60 of the Water Sharing Plan.

¹⁴ Section 71U of the Act, clause 18 of the Dealing Principles and subclause 62(1) and 62(4) of the Water Sharing Plan.

19. Prohibited permanent transfers

- 19.1 Internal Permanent Transfers¹⁵ and External Permanent Transfers¹⁶ of Class A Water Entitlements are prohibited.
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20. Application

- 20.1 An Application is required for a Permanent Transfer.
- 20.2 Applications may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.
- 20.3 Applications must be duly executed by:
- (1) if the Applicant is the sole holder of the Water Entitlements, Delivery Entitlements or Shares, the Applicant; or
 - (2) if several persons are joint holders of the Water Entitlements, Delivery Entitlements or Shares, all the joint holders or an authorised representative of all the joint holders.
- 20.4 Applications:
- (1) must be accompanied by payment of the relevant Charge applicable to the Application;
 - (2) must be accompanied by the original certificates for the Water Entitlements, Delivery Entitlements or Shares or any combination of them (as the case requires); and
 - (3) may be submitted to the Company at any time.
- 20.5 Applications will be considered in the order of the sequence numbers they are allocated by the Company.
- 20.6 The Company may determine that Applications may not be submitted to one or more of its offices.
- 20.7 The Company will notify an Applicant if:
- (1) the Application is not complete or not in accordance with this Policy;
 - (2) the Application is not accompanied by payment of the relevant Charge applicable to the Application; or
 - (3) there are outstanding Charges payable by the Applicant (or an Associate of the Applicant) to the Company;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges. The Application will not be allocated a sequence number until the Company receives the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement is made between the Company and the Applicant (or the Associate of the Applicant) for the payment of the outstanding Charges).

21. Determination

- 21.1 The Company must determine each Application and notify the Applicants of the determination.

¹⁵ Compare with section 71Q of the Act and paragraphs 14(2)(b) of the Dealing Principles.

¹⁶ Sections 71Q, 71R and 71U of the Act and paragraphs 14(2)(b), 15(2)(b) and 18(4)(c) of the Dealing Principles respectively.

- 21.2 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions), provided that:
- (1) the Company must not impose any condition on the Internal Permanent Transfer of a Water Entitlement that would require the person trading the Water Entitlement to hold, buy, sell, obtain, accept, terminate, or vary the volume or unit share of, a Delivery Entitlement;¹⁷ and
 - (2) the Company must not unreasonably restrict the Internal Permanent Transfer of Delivery Entitlements.¹⁸
- 21.3 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application without giving any reason for refusal (subject to rule 21.4), including:
- (1) where the Application is incomplete or not in accordance with this Policy;
 - (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;
 - (3) where there are outstanding Charges payable by an Applicant (or an Associate of the Applicant) to the Company;
 - (4) where an Applicant has not fully repaid water debts or water borrowings, such as any that may have arisen as a result of arrangements made for the early release of water by Snowy Hydro Limited;
 - (5) where a person who holds a legal or equitable interest in the Water Entitlements, Delivery Entitlements or Shares the subject of the Application, has not given approval to the Permanent Transfer;
 - (6) where the relevant Applicant does not provide the security required under rule 23;
 - (7) where an Applicant applies for Shares and the Company does not agree to issue them;
 - (8) where an Applicant applies for Delivery Entitlements and the Company does not agree to issue them;
 - (9) where a requirement of a law (including a requirement for approval by any relevant Government Agency) cannot be satisfied;
 - (10) where the Permanent Transfer would, in the reasonable opinion of the Company, contravene the Company's obligations under a Legal Requirement;
 - (11) where an Applicant will, after the Permanent Transfer, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works; or
 - (12) where an Applicant applies for an Internal Permanent Transfer of Delivery Entitlements and the Company, acting reasonably, restricts the transfer, having taken into account factors which include the following:¹⁹
 - (a) overall capacity in the Company's irrigation network;
 - (b) capacity in the parts of the Company's irrigation network to which water would potentially be delivered under the transferred Delivery Entitlements;

¹⁷ Section 12.15 of the Water Trading Rules.

¹⁸ Section 12.28 of the Water Trading Rules.

¹⁹ Sections 12.28 and 12.29 of the Water Trading Rules. This does not preclude the Company from taking into account factors of the types specified in rules 21.3(1) to 21.3(11) or other factors.

- (c) reconfiguration or decommissioning work in the parts of the Company's irrigation network to which water would potentially be delivered under the transferred Delivery Entitlements;
- (d) connectivity between specific parts of the Company's irrigation network relevant to the proposed transfer;
- (e) payment of fees or charges for access, changing access, or terminating or surrendering access, to the Company's irrigation network;
- (f) the number of Delivery Entitlements reasonably required to irrigate a person's Landholding for both current and expected future water use;
- (g) the net costs to the Company of assessing and giving effect to the transfer of the Delivery Entitlements;
- (h) the provision of reasonable security to the Company for the payment of fees or charges for access to the Company's irrigation network by the person acquiring the Delivery Entitlements; and
- (i) whether the proposed transfer would result in the Delivery Entitlements being held by a person who does not own or occupy land in the area serviced by the Company.

21.4 If the Company decides to restrict an Internal Permanent Transfer of Delivery Entitlements within its irrigation network, it must notify each party to the transfer in writing of the decision and the reasons for the decision (including findings on material questions of fact and references to the evidence or other material on which those findings were based) as soon as practicable, but in any case within 30 days, after the decision is made.²⁰

22. Implementation

22.1 An approved Permanent Transfer takes effect:

- (1) in the case of an Internal Permanent Transfer, on the date on which it is registered by the Company; and
- (2) in the case of an External Permanent Transfer In, on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.

22.2 The Company will register approved Permanent Transfers in the order in which their conditions of approval are fulfilled, or if the conditions of approval of two or more Permanent Transfers are fulfilled at the same time, in the order of the sequence numbers they are allocated by the Company.

22.3 Internal Permanent Transfers do not affect Water Allocation already credited to a Water Allocation Account before the Internal Permanent Transfer takes effect. Part B applies to transfers of Water Allocation.

22.4 An approved Internal Permanent Transfer of Water Entitlements or Delivery Entitlements all the conditions of which have been fulfilled will be effected as follows:

- (1) the Water Entitlements or Delivery Entitlements being transferred by the transferor will be terminated;²¹ and
- (2) the Water Entitlements or Delivery Entitlements to be held by the transferee will be issued;

²⁰ Section 12.30 of the Water Trading Rules.

²¹ A termination fee is not payable merely because Delivery Entitlements are transferred under this Policy.

on and subject to the terms and conditions of the relevant Entitlements Contract.

22.5 In an approved External Permanent Transfer In, the Company:

- (1) must issue Water Entitlements to the relevant Applicant;
- (2) may, at its discretion, agree to issue Delivery Entitlements to the relevant Applicant if the relevant Applicant applies for Delivery Entitlements; and
- (3) may, at its discretion, agree to issue Shares to the relevant Applicant if the relevant Applicant applies for Shares.

23. Security

23.1 Where an Applicant applies for a Permanent Transfer and will, after the Permanent Transfer, hold either:

- (1) Delivery Entitlements but no Water Entitlements; or
- (2) at least five times more Delivery Entitlements than Water Entitlements and at least 250 Delivery Entitlements;

the Company may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of Charges for access to the Company's Works for the delivery of water to the Applicant after the Permanent Transfer.

23.2 The Company must not require security to be given by the Applicant under rule 23.1 in an amount that, at the time the security is given:

- (1) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009* (Cth), would be payable to the Company for the termination or surrender of the Delivery Entitlements held by the Applicant at that time; (this will generally be the amount of the termination fee that would be payable to the Company for the termination or surrender of all of the Delivery Entitlements held by the Applicant at that time); or
- (2) if there is no such amount, exceeds the amount of the "total network access charge" within the meaning of the *Water Charge (Termination Fees) Rules 2009* (Cth) payable to the Company in respect of the financial year in which the security is given.

23.3 The Company may refuse to accept security required under rule 23.1 unless the Applicant offers it in one or more of the following forms:

- (1) a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth) (**Bank Guarantee**);
- (2) a deposit lodged with the Company (**Deposit**); or
- (3) any other form of security agreed upon by the Company and the Applicant.

23.4 If the security given by the Applicant is a Bank Guarantee, the Bank Guarantee must:

- (1) be unconditional; and
- (2) not have an expiry date, except with the Company's consent.

- 23.5 If the security given by the Applicant is a Deposit, the Company must (and the Applicant authorises the Company to) deposit the Deposit in an interest-bearing cash management account at 24-hour call.
- 23.6 The Company must pay interest earned on the Deposit to the Applicant periodically as determined by the Company.
- 23.7 The Applicant bears the risk of loss of the Deposit.
- 23.8 For the purposes of this clause 23, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.
- 23.9 The Company may apply the security given by the Applicant in accordance with clause 23.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination or surrender of the Applicant's Delivery Entitlements or the termination of the Entitlements Contract.
- 23.10 Subject to clauses 6.1 and 23.9, the Company must return any surplus of the security after deduction under clause 23.9 to the Applicant after 14 days have elapsed from the termination or surrender of the Applicant's Delivery Entitlements or the termination of the Entitlements Contract.

24. Delivery

24.1 An Applicant:

- (1) will have no right to the delivery of any water, unless he, she or it holds Delivery Entitlements;²² and
- (2) is responsible for ensuring that he, she or it has sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.

²² Refer to clause 10 (Delivery of water) of the Entitlements Contract regarding the Company's discretion to elect to deliver water to a Customer who has no Delivery Entitlements.

Part D: Transformation

25. Information

- 25.1 The Water Market Rules commenced on 23 June 2009.²³ The transitional period ended on 31 December 2009.
- 25.2 The *Water Act 2007* (Cth), Water Market Rules and other relevant federal legislative instruments are available at www.legislation.gov.au.²⁴ You may wish to contact the ACCC to request further information about the Water Market Rules and the ACCC's role in relation to the Water Market Rules. The ACCC's web site is www.accc.gov.au, its telephone number is 1300 302 502 and its postal address is GPO Box 520, Melbourne VIC 3001.²⁵
- 25.3 This Policy may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.²⁶
- 25.4 If the Company varies its Constitution, Entitlements Contract, Policies or any other contract, arrangement or understanding in a way that affects, or may affect, the respective rights and obligations of the Company and holders of Irrigation Rights in relation to Transformation, the Company will give written notice about the variation to holders of Irrigation Rights within 10 Business Days after the variation occurs.²⁷

26. Transformation generally

- 26.1 Transformation:
- (1) must comply with this Policy; and
 - (2) requires the approval of the Company.
- 26.2 To the maximum extent permitted by law, the Company may, at its discretion, from time to time:
- (1) embargo Transformation; or
 - (2) make exceptions to this Policy on a case-by-case basis.

27. Types of transformation

- 27.1 Transformation includes any of the following arrangements, provided that it is permitted by law:
- (1) **(transfers out – same water source)** an arrangement that would reduce the share component of an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into share component of an Access Licence in the same water source that is held by someone other than the Company;²⁸
 - (2) **(transfers out – different NSW water source)** an arrangement that would cancel an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into share component of an Access Licence specifying a different water source that is issued to someone other than the Company;²⁹ and

²³ Rule 5 of the Water Market Rules.

²⁴ Rule 5 of the Water Market Rules.

²⁵ Rule 5 of the Water Market Rules.

²⁶ Rule 6(1)(b) of the Water Market Rules.

²⁷ Rule 21 of the Water Market Rules.

²⁸ Section 71Q of the Act, clause 14 of the Dealing Principles and clause 58 of the Water Sharing Plan.

²⁹ Section 71R of the Act, clause 15 of the Dealing Principles and clause 60 of the Water Sharing Plan.

- (3) **(transfers out – different state)** an arrangement that would cancel an Access Licence held by the Company to allow Irrigation Rights to be permanently transformed into a corresponding interstate Access Licence equivalent that is issued to someone other than the Company.³⁰

28. Non-complying transformation

- 28.1 Transformation of Class A Water Entitlements cannot comply with the requirements of law.

29. Details of irrigation rights

- 29.1 If a person who holds an Irrigation Right gives written notice to the Company that the person:
- (1) intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
 - (2) requests the Company to provide details of the contractual or other arrangements between the Company and the person relating to the Irrigation Right;

the Company must, within 20 Business Days after receiving the notice, provide those details, including the number of units or volume of water to which the person is entitled under the Irrigation Right as at the date of receipt of the notice and such details as are reasonably necessary to confirm the accuracy of the calculation of the number of units or volume.³¹

- 29.2 Requests for details under rule 29.1 can be made by giving the Company all information which is reasonably required by the Company in order to respond to the request. Customers will be directed to their Entitlements Contract for the details of the contractual or other arrangements between the Company and the Customer relating to the Irrigation Right.

- 29.3 If the holder of an Irrigation Right believes that the details provided under rule 29.1 are not complete or are incorrect and:

- (1) seeks to reach agreement with the Company as to the details of the irrigation Right; and
- (2) the Company and the person do not agree on the details within 10 Business Days after receipt of the details;

the holder may give notice in writing to the Company that the holder seeks a formal negotiation of the matter.³²

30. Details of delivery rights

- 30.1 If a person who holds an Irrigation Right gives written notice to the Company that the person:

- (1) intends to apply, or applies, for Transformation of the whole or part of the Irrigation Right; and
- (2) requires the continuation of a right to have water delivered by the Company after Transformation;

the Company must, within 20 Business Days after receiving the notice, provide details of the contractual terms and conditions between the Company and the person applicable to the right to have water delivered when the notice is received with such variations (if any) to take effect from the Transformation as are permitted under rule 30.3.³³

³⁰ Section 71U of the Act, clause 18 of the Dealing Principles and subclause 62(1) of the Water Sharing Plan.

³¹ Subrule 7(1) of the Water Market Rules.

³² Subrule 7(5) of the Water Market Rules.

³³ Subrule 8(1) of the Water Market Rules.

- 30.2 Notices under rule 30.1 can be made by giving the Company all the information which is reasonably required by the Company in order to respond to the request. Customers will be directed to their Entitlements Contract for details of the contractual terms and conditions between the Company and the Customer applicable to the right to have water delivered.
- 30.3 The Company will not make any variations to the contractual terms and conditions between the Company and the person referred to in rule 30.1 other than variations that:
- (1) are necessary as a consequence of the Transformation; or
 - (2) are agreed in writing by the Company and that person.³⁴
- 30.4 If:
- (1) a person who gives notice to the Company under rule 30.1 believes that the terms and conditions of the right to have water delivered after Transformation have not been provided by the Company under rule 30.1 or that the details provided are incorrect; or
 - (2) the Company and the person do not agree on a variation of the terms or conditions within 10 Business Days after the Company provides written details under rule 30.1;
- the person may give notice in writing to the Company that the person seeks a formal negotiation of the matter.³⁵

31. Formal negotiation

- 31.1 A formal negotiation for the purposes of rules 29.3 and 30.4 is a genuine attempt by the Company to reach agreement with the person, within 30 Business Days after the giving of the notice under rule 29.3 or rule 30.4, as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered as the case requires. The Company will make a genuine attempt to reach agreement within 30 Business Days as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered as the case requires. A genuine attempt for the purposes of this rule includes the taking of such steps as would reasonably be expected to result in the appointment of a third person to resolve the dispute.³⁶
- 31.2 If a third person is appointed to resolve the dispute, the third person's costs (including remuneration and expenses) will be either:
- (1) treated as costs in the cause and paid by the Company and the Applicant in accordance with the resolution of the dispute by the third person if so determined by the third person; or
 - (2) if the third person does not make such a determination, paid by the Company and the Applicant in equal shares.
- 31.3 The Company and the Applicant must pay their own Costs of the formal negotiation.
- 31.4 If the Company is unable to reach agreement with the holder of the Irrigation Right as to the details of the Irrigation Right or the terms and conditions of the right to have water delivered, as the case requires, within 30 Business Days after the giving of the notice under rule 29.3 or 30.4, the Company must, within that period, notify the ACCC of the reasons why the Company is unable to reach agreement within that period.³⁷

³⁴ Subrule 8(2) of the Water Market Rules.

³⁵ Subrule 8(3) of the Water Market Rules.

³⁶ Subrules 7(6), (7) and (10) and 8(4), (5) and (6) of the Water Market Rules.

³⁷ Paragraphs 15(1)(a) and (b) of the Water Market Rules.

32. Application

- 32.1 An Application is required for Transformation.
- 32.2 Applications may be downloaded from the Company's web site (www.murrayirrigation.com.au) or obtained at the Company's Deniliquin, Finley or Wakool offices.
- 32.3 Applications must be made by:
- (1) if the Applicant is the sole holder of the Irrigation Rights, the Applicant; or
 - (2) if several persons are joint holders of the Irrigation Rights, all the joint holders or an authorised representative of all the joint holders.
- 32.4 Applications must either be in the form prescribed by the Company or include the following (except to the extent waived by the Company):
- (1) the name and address of the Applicant;
 - (2) the Water Allocation Account number of the Applicant;
 - (3) the number and class of Irrigation Rights held by the Applicant;
 - (4) the number and class of Irrigation Rights the subject of the Application;
 - (5) either:
 - (a) confirmation that no person other than the Applicant holds a legal or equitable interest in the Irrigation Rights the subject of the Application; or
 - (b) if another person holds a legal or equitable interest in the Irrigation Rights the subject of the Application, confirmation from the person that the person has given approval to the Transformation;
 - (6) the name of the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation;
 - (7) details of the Access Licence (or interstate equivalent) to which the entitlement that is sought is to be appended; and
 - (8) any other information reasonably necessary for the purposes of the Application.
- 32.5 An Application must not specify an Access Licence held by the Company for the purposes of paragraph 32.4(7). The Company is not obliged to subdivide any of its Access Licences.
- 32.6 Applications:
- (1) must be accompanied by payment of the relevant Charge applicable to the Application;³⁸
 - (2) may be accompanied by an application, in accordance with the Charges Policy, for termination or surrender of any Delivery Entitlements that the Applicant wishes to apply to terminate or surrender, in which case, the Application must also be accompanied by payment of the Charges (including the termination fees) relating to any Delivery Entitlements that will be terminated or surrendered, unless the Company agrees that these Charges may be paid later;
 - (3) must be accompanied by all forms that will need to be submitted to a Government Agency to carry out the Transformation to which the Application relates, correctly completed and signed by all necessary signatories (other than the Company); and

³⁸ Subrule 13(1) of the Water Market Rules.

- (4) may be submitted to the Company at any time.
- 32.7 Applications will be considered in the order of the sequence numbers they are allocated by the Company.
- 32.8 The Company will notify the Applicant if:
- (1) the Application is not complete or not in accordance with this Policy or the Water Market Rules;
 - (2) the Application is not accompanied by payment of the relevant Charge applicable to the Application; or
 - (3) there are outstanding Charges payable by the Applicant to the Company in respect of the Irrigation Right;

and specify the further information that is required, the Charge applicable to the Application or the outstanding Charges.³⁹ The Application will not be allocated a sequence number until the Company receives the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement is made between the Company and the Applicant for the payment of the outstanding Charges).

33. Determination

- 33.1 The Company must determine each Application and either:
- (1) notify the Applicant that the Application is approved; or
 - (2) notify the Applicant and the ACCC that the Application has not been approved for one or more of the reasons referred to in rule 33.5. This includes notifying the Applicant that the ACCC has been notified.⁴⁰
- 33.2 The Company must give notice under rule 33.1 within 25 Business Days after the later of:
- (1) receipt by the Company of the Application; and
 - (2) where the Company gives notice under rule 32.8, receipt by the Company of the further information, payment of the Charge applicable to the Application, or payment of the outstanding Charges (or an agreement being made between the Company and the Applicant for the payment of the outstanding Charges).⁴¹
- 33.3 The period referred to in rule 33.2 does not include:
- (1) where an Applicant requests details under rule 29.1 or gives notices under rule 30.1, any period before the Company and the Applicant agree as to the details of the Irrigation Right and as to the terms and conditions of the right to have water delivered, as the case requires; or
 - (2) the Business Days after steps have been taken:
 - (a) to obtain the approval of a person holding a legal or equitable interest in the Irrigation Right; or
 - (b) to satisfy a requirement under a law of a state;

³⁹ Subrule 14(1) of the Water Market Rules.

⁴⁰ Subrule 14(2) of the Water Market Rules.

⁴¹ Subrules 14(2) and (3) of the Water Market Rules.

but before the approval is given or refused or the requirement satisfied, or advice received to the effect that it cannot be satisfied.⁴²

33.4 To the maximum extent permitted by law, the Company may, at its discretion, approve an Application (including by imposing conditions).

33.5 To the maximum extent permitted by law, the Company may, at its discretion, refuse an Application, including:

- (1) where the Application is incomplete or not in accordance with this Policy;⁴³
- (2) where the Application is not accompanied by payment of the relevant Charge applicable to the Application;⁴⁴
- (3) where there are outstanding Charges payable by the Applicant to the Company;⁴⁵
- (4) where a person who holds a legal or equitable interest in the Irrigation Rights the subject of the Application, has not given approval to the Transformation;^{46 47}
- (5) where the Applicant does not provide the security required under rule 36;⁴⁸
- (6) where a requirement of a law of a state (including a requirement for approval by any relevant Government Agency) cannot be satisfied;⁴⁹ or
- (7) where either the Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation will, after Transformation, have a right to have water delivered by the Company but has not installed a Meter to measure the water delivered from the Company's Works.⁵⁰

34. Implementation

34.1 An approved Transformation takes effect on the date on which it is registered by the Company after it has been registered by the relevant Government Agencies.

34.2 In an approved Transformation, the Company must:

- (1) cancel the relevant Irrigation Rights of the Applicant; and
- (2) record the termination or surrender of any Delivery Entitlements which the Applicant has terminated or surrendered in accordance with the Charges Policy.

34.3 Transformation does not affect Water Allocation already credited to a Water Allocation Account before the Transformation takes effect. Part B applies to transfers of Water Allocation.

35. Carryover consequences of transformation

35.1 If:

⁴² Subrule 14(3) of the Water Market Rules.

⁴³ Paragraph 14(2)(b)(iii) of the Water Market Rules.

⁴⁴ Paragraph 14(2)(b)(iii) of the Water Market Rules.

⁴⁵ Paragraph 14(2)(b)(iii) of the Water Market Rules.

⁴⁶ Paragraph 14(2)(b)(i) of the Water Market Rules.

⁴⁷ Security interests in relation to arrangements made for the early release of water by Snowy Hydro Limited may be relevant.

⁴⁸ Paragraph 14(2)(b)(iii) of the Water Market Rules.

⁴⁹ Paragraph 14(2)(b)(ii) of the Water Market Rules.

⁵⁰ Paragraph 20(2)(b) of the Water Market Rules.

- (1) during a Water Year, an Applicant has been granted a number of Carryover Units calculated by reference to the number of Water Entitlements of a class held by the Applicant; and
 - (2) subsequently during the relevant Water Year, an approved Transformation takes effect in respect of the relevant class of Water Entitlements held by the Applicant:
- then clauses 35.2 to 35.6 apply.
- 35.2 Before the end of the relevant Water Year, either:
- (1) a number of Carryover Units held by the Applicant which is equal to the number granted to the Applicant in respect of the number of Water Entitlements the subject of the approved Transformation (**Required Number**); or
 - (2) all of the Carryover Units held by the Applicant;
- whichever is less, will be cancelled.
- 35.3 If the number of Carryover Units cancelled under clause 35.2 is less than the Required Number, the Applicant must, before the end of the Water Year, acquire from persons other than the Company a number of Carryover Units equal to the shortfall. Immediately after the transfer of the relevant Carryover Units to the Applicant takes effect, the Carryover Units will be cancelled.
- 35.4 If, at the end of the Water Year, the number of Carryover Units cancelled under clause 35.2 and clause 35.3 is less than the Required Number, either:
- (1) a number of Megalitres of Water Allocation in the Applicant's Water Allocation Account which is equal to the remaining shortfall; or
 - (2) all of the Water Allocation in the Applicant's Water Allocation Account;
- whichever is less, will be cancelled.
- 35.5 If the number of Megalitres of Water Allocation cancelled under clause 35.4 is less than the remaining shortfall referred to in that clause, the Company may recover from the Applicant, by way of agreed damages for the Applicant's breach of clause 35.3, the Cost of, at the Company's option:
- (1) before the end of the Water Year, acquiring from persons other than the Applicant a number of Carryover Units equal to the remaining shortfall and cancelling them;
 - (2) before the end of the Water Year, acquiring from persons other than the Applicant a number of Megalitres of Water Allocation which is equal to the remaining shortfall and cancelling it; or
 - (3) after the next Water Year commences, acquiring a number of Megalitres of water allocation from a holder of an Access Licence.
- 35.6 The agreed damages referred to in clause 35.5 are a genuine pre-estimate of the Company's loss arising from the Applicant's breach of clause 35.3 and any amounts payable under clause 35.5 will constitute a debt due from the Applicant to the Company that must be paid by the Applicant to the Company on demand.

36. Security

- 36.1 Where an Applicant applies for Transformation and will, after Transformation, have either:
- (1) a right to have water delivered by the Company but no Irrigation Rights; or

- (2) a right to have a volume of water delivered by the Company⁵¹ in respect of the current financial year (disregarding any constraints on delivery) which is more than five times the volume of water that the Applicant is entitled to receive in respect of that year under the Irrigation Rights held by the Applicant⁵², and hold at least 250 Delivery Entitlements;
- the Company may, to the maximum extent permitted by law, require security to be given by the Applicant for the payment of Charges for access to the Company's Works for the delivery of water to the Applicant after Transformation.⁵³
- 36.2 The Company must not require security to be given by the Applicant under rule 36.1 in an amount that, at the time the security is given:
- (1) exceeds the amount that, under the *Water Charge (Termination Fees) Rules 2009 (Cth)*, would be payable to the Company for the termination of all of the Delivery Entitlements held by the Applicant at that time;⁵⁴ or
 - (2) if there is no such amount, exceeds the amount of the "*total network access charge*" within the meaning of the *Water Charge (Termination Fees) Rules 2009 (Cth)* payable to the Company in respect of the financial year in which the security is given.⁵⁵
- 36.3 The Company must not refuse to accept security required under rule 36.1 by reason only of the form in which it is offered if an Applicant offers it in one or more of the following forms:
- (1) a charge over an Irrigation Right that the Applicant continues to hold;
 - (2) a charge over an unencumbered Access Licence (or interstate equivalent), or an unencumbered part thereof, obtained by the Applicant as the result of the Transformation of part of an Irrigation Right;
 - (3) a charge over an unencumbered Access Licence (or interstate equivalent), or an unencumbered part thereof, held by the Applicant;
 - (4) a guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959 (Cth)* (**Bank Guarantee**);
 - (5) a deposit lodged with the Company (**Deposit**); or
 - (6) any other form of security agreed upon by the Company and the Applicant.⁵⁶
- 36.4 If the security given by the Applicant is a Bank Guarantee, the Bank Guarantee must:
- (1) be unconditional; and
 - (2) not have an expiry date, except with the Company's consent.
- 36.5 If the security given by the Applicant is a Deposit, the Company must (and the Applicant authorises the Company to) deposit the Deposit in an interest-bearing cash management account at 24-hour call.
- 36.6 The Company must pay interest earned on the Deposit to the Applicant periodically as determined by the Company.
- 36.7 The Applicant bears the risk of loss of the Deposit.

⁵¹ This will usually be equal to the number of Delivery Entitlements that the Applicant holds.

⁵² This refers to the situation where the Applicant will, after Transformation, hold at least five times more Delivery Entitlements than Water Entitlements.

⁵³ Subrule 10(1) of the Water Market Rules.

⁵⁴ This will generally be the amount of the termination fee that would be payable to the Company for the termination of all of the Delivery Entitlements held by the Applicant at that time.

⁵⁵ Subrule 10(2) of the Water Market Rules.

⁵⁶ Subrule 10(3) of the Water Market Rules.

- 36.8 For the purposes of this clause 36, a reference to interest means interest actually earned on the Deposit less all duty, bank charges and any other money properly payable in respect of the investment of the Deposit.⁵⁷
- 36.9 The Company may apply the security given by the Applicant in accordance with clause 36.1 to any outstanding Charges if they remain unpaid for 14 days after they fall due or upon termination or surrender of the Applicant's Delivery Entitlements or termination of the Entitlements Contract.
- 36.10 Subject to clauses 6.1 and 36.9, the Company must return any surplus of the security after deduction under clause 36.9 to the Applicant after 14 days have elapsed from the termination or surrender of the Applicant's Delivery Entitlements or termination of the Entitlements Contract.

37. Delivery

- 37.1 The Company will not, as a condition of approving an Application, terminate, or require the Applicant to terminate, any Delivery Entitlements.⁵⁸
- 37.2 The Applicant or the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation:
- (1) will, after Transformation, have no right to the delivery of any water unless he, she or it holds Delivery Entitlements; and
 - (2) is responsible for ensuring that he, she or it will, after Transformation, have sufficient Delivery Entitlements for the delivery of all of the Water Allocation which he, she or it wishes to have delivered.
- 37.3 A Customer who holds an Access Licence (or interstate equivalent) obtained as a result of Transformation must, if he, she or it wishes the Company to deliver Transformed Water Allocation to the Customer's Landholding, do an External Annual Transfer In.
- 37.4 If:
- (1) a Customer does an External Annual Transfer In under clause 37.3; and
 - (2) any of the relevant Water Allocation remains in a Water Allocation Account at the end of the Water Year;

it cannot be carried over to the next Water Year and it will be cancelled without compensation at the end of the Water Year, except to the extent that the Customer is otherwise permitted to carry it over in accordance with the Entitlements Contract. To avoid cancellation, the Customer must complete an External Annual Transfer Out or an Internal Annual Transfer in respect of the relevant Water Allocation before the end of the Water Year. This will require the Customer to submit an Application before the relevant deadline specified in clause 10.

38. Tagging

- 38.1 Where the person who is to hold the Access Licence (or interstate equivalent) obtained as a result of the Transformation obtains approval to nominate a water supply work (as defined in the Act)⁵⁹ which is not in the same NSW water tagging zone (as defined in the Act) as the Access Licence held by the Company whose share component was reduced by the Transformation, the person's Access Licence (or interstate equivalent) will be tagged. This means that the Access Licence (or interstate equivalent) will retain the characteristics of Access Licences that are subject to the Water Sharing Plan, rather than being converted into any other form.⁶⁰

⁵⁷ Subrule 13(2) of the Water Market Rules.

⁵⁸ Rule 19 of the Water Market Rules.

⁵⁹ Dictionary to the Act and section 71W.

⁶⁰ Section 71W of the Act and clause 21 and schedule 1 of the Access Licence Dealing Principles.

Part E: Conversions

39. Conversions prohibited

39.1 Conversion of Water Entitlements is prohibited.⁶¹

⁶¹ Section 71O of the Act, clause 11 of the Dealing Principles and clause 57 of the Water Sharing Plan.